

November 24, 2014

Regulations Division  
Office of General Counsel  
U.S. Department of Housing and Urban Development  
451 7th Street SW., Room 10276  
Washington, DC 20410-0500

RE *[Docket No. FR-5173-N-02, Affirmatively Furthering Fair Housing Assessment Tool:  
Solicitation of Comment--60-Day Notice Under the Paperwork Reduction Act of 1995]*

To Whom It May Concern:

This letter sets forth the comments of the City of New York (City) on the above-referenced proposed draft Assessment Tool.

The City is the largest municipal developer of affordable housing in the nation and is currently engaged in a new plan to build and preserve 200,000 affordable units across all five boroughs of the City. The City's Department of Housing Preservation and Development (HPD), the Mayor's Office for People with Disabilities, the Department of City Planning and the New York City Housing Authority (NYCHA) contributed to the comments below. HPD and NYCHA are directly responsible for siting, creating and preserving affordable housing opportunities, and both administer Section 8 programs and use other federal funding streams. NYCHA owns and operates the largest public housing program in the nation, serving over 403,120 residents.

The City wholeheartedly shares the goal of increasing access to high-opportunity neighborhoods for historically marginalized populations. Indeed, our *Housing New York* plan commits the City to "foster diverse and thriving neighborhoods." Unfortunately, the proposed Assessment Tool (the Tool) may have the unintended effect of leading local governments to take actions that may not serve the needs and priorities of their communities, and does not recognize the real-world constraints under which local governments operate. We are deeply concerned that completion of this tool will interfere with our ability to make fair and locally based decisions about the most pressing needs facing our City.

To improve the Tool's utility and its ability to further fair housing opportunity, while also ensuring that localities not become overburdened with excessive regulations, the City provides the following comments.

#### **1. Timing of release of the proposed tool**

The proposed Tool is presented as the mechanism by which program participants will conduct an Assessment of Fair Housing (AFH), as outlined by the 2013 Proposed Rule regarding the obligation to affirmatively further fair housing. The proposed Tool also would replace the Analysis of Impediments (AI) process currently in use.

On September 17, 2013, the City submitted extensive comments to HUD on the Proposed Rule. While expressing support for the goal of increasing access to high-opportunity

The cover page of the Tool requires a signature affirming that, “the program participant(s) have prepared an assessment that fulfills the requirements at 24 CFR §§ 5.150-5.164 or comparable replacement regulations of the Department of Housing and Urban Development.” The affirmation’s referral to “comparable replacement regulations” is unclear. If a City official or employee is to affix his or her signature to a pre-prepared statement, the statement should clearly reference what the employee is signing off on.

## 12. Conclusion

The City’s primary concern with the draft Assessment Tool is its requirement that respondents identify “determinants” of fair housing issues. While data and local knowledge may be sufficient to draw correlations, grantees will be hard-pressed to ascertain causal relationships, as the Tool compels participants to do. The Tool encourages, and may be used to require, grantees to create policy on the basis of incomplete information and personal and anecdotal perceptions. While local governments frequently have to make policy decisions on the basis of incomplete information, a tool that forces localities to assume unproven causal conclusions will not necessarily further grantees’ ability to effectively increase fair housing choice and could lead to policies with negative unintended consequences. The stakes of drawing unsupported causal conclusions are high because of the critical importance of these issues, and the difficulty of having thoughtful discussions about the issues against the backdrop of local politics.

The stakes also are unknown, given the lack of clarity about the potential uses of the implications of causality the Tool asks localities to draw. It is unclear, for example, whether and how grantees’ future funding could be affected by such implications. Continued federal support for local housing programs is essential to the nation’s efforts to affirmatively further fair housing. At a minimum, to assure local governments across the nation that the tool will be used to help localities develop more effective programs, rather than serving as a basis for litigation and punitive actions, the tool should make clear that localities will be given a safe harbor period in which to further evaluate any causal implications drawn from the assessment and to formulate appropriate responses to any problems the assessment reveals.

The City appreciates the opportunity HUD has offered to receive stakeholders’ views on this important policy initiative. If you have any questions or concerns, please do not hesitate to contact HPD’s Director of Legislative Affairs and Federal Policy, Jordan Press, at [pressj@hpd.nyc.gov](mailto:pressj@hpd.nyc.gov).

Sincerely,



Vicki Been

Commissioner, New York City Department of Housing Preservation and Development



Carl Weisbrod

Director, New York City Department of City Planning